

THE UNITED REPUBLIC OF TANZANIA
JUDICIARY
THE HIGH COURT OF TANZANIA
IN THE DISTRICT REGISTRY OF DODOMA
AT DODOMA

LAND CASE NO. 23 OF 2021

MARTIN RICHARD MASSI AND 11 OTHES.....PLAINTIFFS

VERSUS

DODOMA CITY COUNCIL.....1ST RESPONDENT

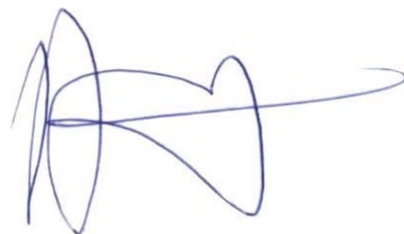
THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

RULLING

Date of Ruling: 28/03/2023

Mambi, J.

This ruling emanates from the preliminary objection on points of law (PO) raised by the respondents that the plaint filed by the plaintiffs is bad in law for contravening Order VII Rule 3 of the Civil Procedure Code [R: E 2019] (herein the CPC).



During hearing the parties prayed to argue by way of written submissions and this court ordered parties to do so. In their submissions the respondents had the legal services of Mr. Camilius Ruhinda-Learned Senior State Attorney and the plaintiffs by Ayubu Suday-Learned Advocate.

The Mr. Ruhinda started his submission by arguing that the plaint contravenes Order 7 Rule 3 since the said provision provides for mandatory on the claims of immovable properties the claimant to describe categorically the description sufficient to identify it. The learned State Attorney contended that the plaint filed by the plaintiffs under paragraph 4 only describes on the size of the suit land which is 67 acres. He added that the said plaint states further on the location of the suit land that it is located at Msisi street, Hombolo Makulu Ward within Dodoma City Council. It was Mr. Ruhinda's view that the plaint was supposed to state clearly whether the property is registered or not; if it is not surveyed, the boundaries of the suit property and the description of the neighbours or neighbouring properties and if the land is surveyed then it was enough to state its plot number and block number indicated in the title deed. Mr. Ruhinda backed his submissions with decision of the court in **Martin Fredrick Rajabu vs Ilemela Municipal**

Council & Another, Civil Appeal 197 of 2019 [2022] TZCA 434 (18 JULY 2022).

The learned Senior State Attorney stated the rationale of Order 7 Rule 3 is to give description sufficiently to identify the property in dispute. Additionally, Mr. Ruhinda stated that the other purpose of specific identification of the suit property is to know whether or not the suit land was subject to a previous litigation and to preclude future litigation in respect of the same property and further that for easy of executing a decree of the court. He further referred this Court on **Abutwalib A. Shoko vs. John Long and Albin Tarimo**, Land Case No. 20 of 2017 (at Arusha-Unreported)

In his response Mr. Suday for the plaintiffs faulted the PO and argued that the description as to the suit land is clear on the plaint and its annexures. He referred this Court on paragraphs 4 of the plaint that it describes the suit land by its size that is 64 acres and its location at Msisi Street, Hombolo Makulu Ward within Dodoma City Council. To him these were sufficient to identify the suit land. Mr. Suday went on submitting that apart from paragraph 4 other paragraphs of the plaint also described the suit land the same being paragraph 5, 7, 8, and 9 which states the size of each land owned by each plaintiff and further that the lands claimed by each plaintiff

are in the same place meaning being neighbours all of them share boundaries. The learned counsel went on referring this court on annexure M-1, M-2 and M-3 of the plaint and contended that all of them describes the suit land of the plaintiffs. With regard to the authorities relied by Mr. Ruhinda, Mr. Suday contended that they are distinguishable to the present case.

Upon perusal of the documents laid before me and the submissions of the parties in support and against the point of preliminary objection. I find one issue for my determination, to wit, whether the application before this Court is competent or not.

At this juncture it is incumbent upon this Court to see what the law says. Order VII Rule 3 of the CPC provides as follows;

*"Where the subject matter of the suit is **immovable property, the plaint shall contain a description of the property sufficient to identify it** and, in case such property can be identified by a title number under the Land Registration Act, the plaint shall specify such title number."*Emphasis mine.

The wording of the provision above is clear that in claims involving immovable properties that is landed properties, the claimant must state sufficiently the description of the said property for sufficient or easy of identification. The provision makes it a mandatory requirement by using the

word "**shall**" as according to the law of Interpretation Act, Cap 1 R: E 2019, mandates the party concerned. The rationale of describing sufficiently the suit property is, so that it can be sufficiently identified by the defendant. This will enable him to know the land in dispute and in turn will enable him to prepare in his defense. Further to that, at the end of litigation will ease the executing court in execution of its decree and orders.

Coming to the case at hand, under paragraph 4 of the plaint, the plaintiff attempted to describe the suit property by stating its size and location being 67 acres located at Msimbazi Street, Hombolo Makulu Ward within Dodoma City Council. It is not known how the defendants if are owning many plots of lands at Msimbazi Street in Hombolo Makulu could ascertain the land disputed by the plaintiffs. The plaintiffs' counsel in his submission stated that all the lands contested by the plaintiffs are in the same place bordering each other.

It is my considered view that the plaint should have prescribed further the borders with which it makes with other lands on all geographical directions or if it is a surveyed land then by the title numbers of the owners. It is my further considered view that it was not enough for the plaintiffs, their lands being un-surveyed lands, then to assume annexure M-1, a sale agreement of one of the plaintiffs, annexure M-2 and M-3 which do not describe the whole suit land, that they could help the defendant and this Court to succinctly identify the suit land with clarity.

From the foregoing brief discussion, I am of the settled mind that the suit before this Court is unsuitable and untenable. I thus entirely agree with the defendants that failure to describe with clarity the land in dispute was bad in law which renders the suit untenable.

From my analysis and observations, I find the preliminary objection is meritorious and is accordingly upheld and sustained. In the premises and from the foregoing reasons, the plaint filed by the plaintiff is hereby struck out. I make no order as to costs.

It is so ordered.



A. J. MAMBI

JUDGE

28/03/2023

Ruling delivered in Chambers this 28th of March, 2023 in presence of Ms. Sarah Ngereza learned Advocate for the Plaintiff.



A. J. MAMBI

JUDGE

28/03/2023

Right of appeal explained.



A. J. MAMBI

JUDGE

28/03/2023

